

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Laura Kastner	Team: Squad #12	CCRB Case #: 201505897	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Sunday, 07/05/2015 1:56 AM	Location of Incident: [REDACTED]	Precinct: 47	18 Mo. SOL 1/5/2017	EO SOL 1/5/2017	
Date/Time CV Reported Sun, 07/05/2015 7:15 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 07/17/2015 10:54 AM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. LT Michael Raso	00000	933235	047 PCT
2. An officer			
3. Officers			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Michael Gee	02910	922409	047 PCT
2. POM Damian McIntosh	11340	942167	047 PCT
3. LT Kevin Kenny	00000	921461	047 PCT
4. INS Ruel Stephenson	00000	916748	047 PCT

Officer(s)	Allegation	Investigator Recommendation
A. An officer	Force: An officer used physical force against § 87(2)(b)	[REDACTED]
B. An officer	Discourtesy: An officer spoke discourteously to § 87(2)(b)	[REDACTED]
C. LT Michael Raso	Force: Lt. Michael Raso used physical force against § 87(2)(b)	[REDACTED]
D. LT Michael Raso	Discourtesy: Lt. Michael Raso spoke discourteously to § 87(2)(b)	[REDACTED]
E. Officers	Discourtesy: Officers spoke discourteously to § 87(2)(b)	[REDACTED]
F. An officer	Force: An officer used physical force against § 87(2)(b)	[REDACTED]

### Case Summary

On July 5, 2015, § 87(2)(b) and § 87(2)(b) filed a complaint with IAB while in police custody at the 42<sup>nd</sup> Precinct stationhouse (Board Review 01), which was received at the CCRB on July 17, 2015. Earlier that morning, a 4<sup>th</sup> of July barbeque with hundreds of attendees was taking place at § 87(2)(b) in the Bronx. Loud music was playing and liquor was being served. The party spilled out onto the surrounding sidewalks and streets and double-parked vehicles lined the streets. Numerous officers from the 47<sup>th</sup> Precinct, including Lt. Michael Raso, Lt. Kevin Kenny and Sgt. Michael Gee, and possibly officers from other commands, arrived and began dispersing the crowd. A fight broke out between two women. Some of the party attendees then allegedly refused to disperse, resulting in small pockets of arrests taking place at the scene.

An unidentified officer allegedly ordered § 87(2)(b) to “shut the fuck up” (**Allegation A**), pushed him to the ground, placed a knee against his face (**Allegation B**), and arrested him for resisting arrest and disorderly conduct for fighting/violent behavior.

Lt. Raso allegedly pushed § 87(2)(b) (**Allegation C**) and ordered him to “get the fuck out of here” (**Allegation D**). After § 87(2)(b) moved to a different area of the party, Lt. Raso allegedly approached and asked, “Didn’t I tell you to fucking move?” (**within Allegation D**) and punched § 87(2)(b) in his face six or seven times (**within Allegation C**), causing swelling, as additional unidentified officers approached to assist. § 87(2)(b) was arrested for resisting arrest and disorderly conduct for fighting/violent behavior.

As § 87(2)(b) walked through the party, unidentified officers allegedly ordered him to “get the fuck out of here,” and to “Shut the fuck up” (**Allegation E**). Seemingly out of nowhere, an unidentified officer then allegedly punched § 87(2)(b) in the mouth once, causing him to fall to the ground (**Allegation F**). § 87(2)(b) was handcuffed and arrested for resisting arrest and disorderly conduct for fighting/violent behavior.

There is no video evidence in this case.

On October 11, 2015, this case was reassigned from Investigator Christina Vuong to Investigator Nicholas Carayannis. On November 23, 2015, it was reassigned to Inv. Laura Kastner. This case is older than 90 days due to personnel changes and difficulty identifying officers.

### Mediation, Civil and Criminal Histories

- This case was not eligible for mediation.
- As of December 17, 2015, § 87(2)(b) has not filed a Notice of Claim with the City of New York regarding this incident (Board Review 02). § 87(2)(b)  
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- As of December 17, 2015, § 87(2)(b) has not filed a Notice of Claim with the City of New York regarding this incident (Board Review 02). § 87(2)(b)  
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§ 87(2)(b)

- § 87(2)(b) filed a Notice of Claim with the City of New York regarding this incident (Board Review 09). He is seeking \$500,000 for emotional and psychological damages, physical injury and pain and suffering as a result of being stopped, questioned, punched in the face, knocked down, arrested, detained, and subsequently released without charges or explanation. As of December 22, 2015, no 50H hearing has been held. § 87(2)(b)

### **Civilian and Officer CCRB Histories**

- This is the first CCRB complaint in which § 87(2)(b) (Board Review 11) and § 87(2)(b) (Board Review 12) are participants.
- § 87(2)(b)
- Lt. Raso, a 12 year member-of-the-service, has 18 prior CCRB complaints containing 54 CCRB allegations against him, 11 of which were substantiated (see officer history). In CCRB case number 200801117, the Board recommended that Lt. Raso receive a command discipline for pointing his gun and stopping an individual, but the NYPD issued him instructions. In CCRB case number 200902991, the Board recommended that Lt. Raso receive charges for stopping a vehicle, but the NYPD issued him instructions. In 201106779, the Board recommended that Lt. Raso receive charges for stopping a vehicle, but the NYPD took no disciplinary action against him. In CCRB case number 201408513, the Board recommended that Lt. Raso receive formalized training for entering and searching premises and for damaging property, but the NYPD disposition is still pending. In CCRB case number 201502152, the Board recommended that Lt. Raso receive charges for stopping a vehicle and frisking an individual, but the NYPD disposition is still pending. In CCRB case number 201505414, the Board recommended that Lt. Raso receive charges for authorizing entry into a premises and seizing property, but the NYPD disposition is still pending.

### **Potential Issues**

§ 87(2)(b) and § 87(2)(b) provided brief phone statements, but were otherwise uncooperative with the investigation (see IAs). Between July 20, 2015 and August 19, 2015, five calls were placed to § 87(2)(b) resulting in four voicemail messages, and three unreturned letters were sent to him. § 87(2)(b) scheduled an in-person statement for August 6, 2015, but failed to appear at the CCRB in regard. Between July 20, 2015 and August 13, 2015, five calls were placed to § 87(2)(b) resulting in four voicemail messages, and two unreturned letters were sent to him. § 87(2)(b) scheduled an in-person statement for July 30, 2015, but failed to appear at the CCRB in regard.

### **Findings and Recommendations**

#### **Explanation of Subject Officer Identification**

The identification of subject officers was complicated by the following:

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The three incidents involved in this case occurred during the course of a large party which numerous officers responded to. By all accounts, the party numbered in the hundreds. Event § 87(2)(b) was generated in regard to officers shutting down the party and requesting assistance for crowd control, but the Event Unit Information fails to list any of the units or commands that responded to that request (Board Review 14). Additionally, § 87(2)(b) and § 87(2)(b) all said that the subject officers of their allegations were white men, all but one of whom was dressed in a white shirt. However, all three arrests reports (Board Review 15) note that Sgt. Gee assigned the arrests to PO Damian McIntosh from the 47<sup>th</sup> Precinct, whose NYPD MOS photo indicates is a dark-skinned black man (Board Review 16). The Unusual Occurrence Report (Board Review 17) that was prepared for § 87(2)(b)'s arrest confirms that PO McIntosh was not present during his arrest and states that he was assigned the arrest after the fact. Moreover, the three arrest reports contain the exact same narrative and fail to note which officers were involved in each arrest.

According to Lt. Raso (Board Review 18), he assigned the arrests to PO McIntosh at the conclusion of the incident, because PO McIntosh had been posted at the party throughout the night. Lt. Raso also said he had multiple unidentified supervisors drive by throughout the night to ensure it did not get out of hand, as large parties at that location had been a problem for the command in the past. Lt. Raso explained that all officers from the command were dressed in uniform that night because plainclothes assignments were suspended due to the holiday. However, due to the failure of the NYPD documents to properly note the officers who arrived at the scene, it is unclear which and how many supervisors with white shirts were present throughout the night. Other than Lt. Kenny and Lt. Raso, the investigation determined that at least one additional 47<sup>th</sup> Precinct supervisor, Ins. Ruel Stephenson, was present, but his NYPD MOS photo indicates that he is a dark-skinned black man (Board Review 19).

Lt. Raso (Board Review 18) and Lt. Kenny (Board Review 20) both acknowledged interacting with a black man, identified via investigation as § 87(2)(b). Lt. Raso also acknowledged being present during the arrests of § 87(2)(b) and § 87(2)(b) identified via investigation, although he could not distinguish between the two men. However, Lt. Raso and Lt. Kenny denied participating in or witnessing any of the actions alleged by the civilians. Additionally, Sgt. Gee, who was dressed in a blue shirt, denied participating in the apprehension of any of the men arrested from the scene and denied witnessing any of the actions alleged by the civilians (Board Review 21).

The investigation was unable to identify the officers involved in § 87(2)(b)'s arrest because of the above listed reasons and because § 87(2)(b) was uncooperative with the investigation and there were no known civilian witnesses. Thus, Allegations A and B have been pled to "An officer."

§ 87(2)(b) (Board Review 07) described the officer who allegedly spoke discourteously to him and used physical force against him as a white man, approximately 5'7" tall, 150 pounds with black hair. Lt. Raso's NYPD MOS photo and pedigree information indicate that he is a white man who is § 87(2)(b) and has § 87(2)(b). Additionally, § 87(2)(b) said the officer who approached him first was the one who spoke discourteously to him and punched him in the face. Because Lt. Raso acknowledged approaching § 87(2)(b) and being the only officer to make physical contact with him prior to § 87(2)(b) being brought to the ground, and because § 87(2)(b) attributed the discourteous language and physical force allegations to the same officer, Allegations C and D have been pled to Lt. Raso.

§ 87(2)(b) alleged that PO1, described as a white man, approximately 40 to 45 years old, 5'10" tall, 190 to 200 pounds and dressed in a white shirt with a hat on, ordered him to "get the fuck out of here" and that when § 87(2)(b) explained his intention to leave, PO2, described as a white man, approximately 25 to 30 years old, 5'10" tall and 180 pounds, ordered him to "shut the fuck up." § 87(2)(b) further alleged that without saying anything, PO5, whom he had not noticed before and who was described as a darker-skinned Hispanic man, approximately 30 to 35 years old, a 6'1" tall, 210 to 220 pounds, with a light beard and dressed in uniform and black gloves, came from behind PO1 and immediately punched § 87(2)(b) on the left side of his upper lip once, causing him to fall backward and land forward facing on the street near the curb. This punch caused swelling and bleeding to § 87(2)(b)'s left upper lip (Board Review 22), and the fall caused § 87(2)(b) to sustain scratches to his arms.

§ 87(2)(b) (Board Review 23), § 87(2)(b)'s cousin, alleged that officers spoke discourteously and that force was used against § 87(2)(b). She alleged the force against a white officer dressed in a blue shirt. § 87(2)(b) vacillated as to whether it was one officer or numerous officers using force.

Lt. Raso was the only officer interviewed who saw § 87(2)(b)'s arrest. He said that § 87(2)(b) interfered in the arrests of two women and that unidentified officers handcuffed him without the use of force or profanity.

All of the known white officers dressed in white shirts were interviewed, and none of these officers acknowledged having any interaction with § 87(2)(b). Given the number of officers, the inconsistencies between § 87(2)(b)'s, § 87(2)(b)'s, and Lt. Raso's statements, and given the lack of documentation, the investigation was unable to identify the subjects of these allegations. The investigation did not even have a pool of officers from which a photo array could be generated. Thus, Allegation E has been pled to "Officers."

#### **Allegations not pleaded**

- **Force:** A handcuffs too tight allegation has not been pled because although the IAB log states that § 87(2)(b) alleged this in his initial complaint, he did not allege it to the CCRB (Board Review 01 and Board Review 22).
- **Force:** § 87(2)(b) said he saw § 87(2)(b) being punched and kicked by four or five unidentified officers as § 87(2)(b) swung at the officers (Board Review 04). Although § 87(2)(b) alleged that physical force was used against him, an allegation that is pled, he did not allege the force described by § 87(2)(b) nor did any of the officers interviewed acknowledged participating in or witnessing the force described. This additional alleged force has therefore not been pled.
- **Abuse:** Although Lt. Raso acknowledged that sound equipment was confiscated from the scene (Board Review 18), no civilian complained of this and the owner of the equipment remains unknown. As such, no seizure of property allegation has been pled.

#### **Allegation A – Force: An officer used physical force against § 87(2)(b)**

#### **Allegation B – Discourtesy: An officer spoke discourteously to § 87(2)(b)**

As detailed above within Potential Issues and Explanation of Subject Officer Identification, § 87(2)(b) was uncooperative with the investigation and no officer interviewed acknowledged interacting with him or witnessing an interaction similar to the one § 87(2)(b) described. Additionally, neither § 87(2)(b) nor § 87(2)(b) (a guest at the party) (Board Review 23), the only two civilians who fully cooperated with the investigation, witnessed § 87(2)(b).

§ 87(2)(b)'s interaction with any officer. § 87(2)(b), § 87(2)(g)

**Allegation C – Force: Lt. Michael Raso used physical force against § 87(2)(b)**

**Allegation D – Discourtesy: Lt. Michael Raso spoke discourteously to § 87(2)(b)**

§ 87(2)(b) (Board Review 07) alleged that while attending the party, Lt. Raso approached him, pushed him, and ordered him to “get the fuck out of here.” § 87(2)(b) further alleged that after he moved to a different location at the party, Lt. Raso said, “Didn’t I tell you to fucking move?” and punched § 87(2)(b) in his face six or seven times, causing swelling. § 87(2)(b) did not witness this interaction and none of the other civilians who participated in the investigation acknowledged witnessing § 87(2)(b) interact with officers at all.

Lt. Raso (Board Review 18) said that after two women engaged in a physical fight were arrested, officers tried to keep the crowd calm and orderly and directed traffic to clear the scene. At this time, Lt. Raso and Ins. Stephenson observed § 87(2)(b) who was sitting on the rear of a car seemingly intoxicated, inciting disorder by yelling vulgarities and cursing at the crowd. When § 87(2)(b) refused to comply with Ins. Stephenson’s order to quiet down, Lt. Raso decided to arrest him for disorderly conduct.

Lt. Raso said that § 87(2)(b) refused to step down from the car after he ordered him to do so at least twice. At that point, Lt. Raso pulled § 87(2)(b) off of the car by his mid-section/torso. Once § 87(2)(b) was off the car, still in a standing position, Lt. Raso attempted to rotate him around to place him in handcuffs, but § 87(2)(b) pulled his arms away. Lt. Raso said he pulled § 87(2)(b) to the ground by his torso to gain control of him and that once on the ground, § 87(2)(b) tucked his arms underneath his body. Lt. Raso, Ins. Stephenson, Lt. Kenny, who had been nearby, and possibly one additional unidentified officer, were all needed to successfully pull § 87(2)(b)'s arms behind his back as § 87(2)(b) continued pulling his arms away. Lt. Raso denied that § 87(2)(b) threw any punches during this struggle, which lasted approximately 30 seconds to one minute and concluded with the officers successfully pulling § 87(2)(b)'s hands behind his back and rear handcuffing him.

Lt. Raso denied witnessing any swelling to § 87(2)(b)'s face, but acknowledged seeing some abrasions on the right side of § 87(2)(b)'s forehead and cheek, which Lt. Raso attributed to him pulling away from the officers while on the ground.

Lt. Raso denied making the alleged discourteous statements and denied using any profanity throughout this incident.

Lt. Kenny (Board Review 20) said that when he first observed § 87(2)(b) he was on the ground cursing, screaming, flailing his arms and kicking his feet. Lt. Kenny could not recall which officers from his command were interacting with § 87(2)(b) but said he approached to assist them and held § 87(2)(b)'s upper body down as those officers grabbed § 87(2)(b)'s arms and rear handcuffed him after a 30-second struggle. Lt. Kenny denied participating in or witnessing any additional physical force be used against § 87(2)(b) and denied hearing Lt. Raso make the alleged discourteous statements.

Sgt. Gee (Board Review 21), who did not interact with § 87(2)(b) said he heard Ins. Stephenson order § 87(2)(b) to leave and heard § 87(2)(b) cursing loudly, making statements such as, “I’m not fucking leaving.” After a few minutes, Sgt. Gee said § 87(2)(b) “lunged” at Ins. Stephenson, who took a step back as other unidentified officers moved in and grabbed § 87(2)(b)'s arms. § 87(2)(b) flailed his arms and somehow, Sgt. Gee did not see how, ended up on

the ground and tucked his hands underneath his body. The unidentified officers pulled § 87(2)(b)s arms behind his back and handcuffed him. Sgt. Gee witnessed no additional physical force be used against § 87(2)(b) and observed no injuries to him. He denied hearing Lt. Raso make the alleged discourteous statements.

§ 87(2)(b), § 87(2)(g)

**Allegation E – Discourtesy: Officers spoke discourteously to § 87(2)(b)**

**Allegation F – Force: An officer used physical force against § 87(2)(b)**

As shown above, the investigation was unable to identify the officers who allegedly spoke discourtesy and used physical force against § 87(2)(b) § 87(2)(g)

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Squad: #12

Investigator: \_\_\_\_\_  
Signature Print Date

Pod Leader: \_\_\_\_\_  
Title/Signature Print Date

Attorney: \_\_\_\_\_  
Title/Signature Print Date